IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.366 OF 2005

Sukhdeo Vithal Navatre ...Appellant

Vs.

Laxman Malu Navatre & Ors. ...Respondents

Mr.V.Z.Kankaria for the Appellant

CORAM: A.S.OKA, J.
DATED: APRIL 6,2005.

P.C.:

1. The Appeal is by unsuccessful original Plaintiff. The suit is filed by the Appellant-Plaintiff for partition and separate possession of the suit property. The Courts below have accepted the defence of the original Defendants that by registered partition deed dated 10th January 1957 partition was effected and shares of the parties were separated. Based on the said registered deed of partition, the suit for partition filed by the Appellant-Plaintiff has been dismissed and the decree of the Trial Court has been confirmed by the Appellate Court. The Appellate Court also relied upon the earlier deed of partition dated 10th January 1957 and held that the Appellant is not entitled to partition.

2. Shri Kankaria, learned Counsel for the Appellant has invited my attention to the findings recorded in paragraph No.60 of the Judgment of the Trial Court which read thus :

"60. The partition deed at Exh.84 dated 10-1-1957 shows that there is a well in survey No.72/2 and Govinda Navatre has 1/4th share in it. the partition deed shows there is a well in S.No.85 and the Plaintiff has 1/3rd share in it. The partition deed shows that there is a well in S.No.80/2 and Laxman Navatre has 1/2 share in it. The said partition deed shows that there is a well in S.No.85 and Tukaram Navatre has 1/3rd share in it. Thus, there would be shares in the well as per the partition deed to Plaintiff. Hence, I hold that Plaintiff has share in the well as shown in partition deed in Exh.84 dated 10-1-1957. Hence, this issue no.3 is answered accordingly."

He submitted that the Trial Court has categorically recorded a finding that the Appellant has right to use the water from certain well on the basis of deed of partition dated 10th January 1957. The Trial Court has specifically held that the Appellant-Plaintiff will be entitled to shares in the well in accordance with the said deed of partition. The grievance of Shri Kankaria is that the Trial Court ought to have passed a decree granting declaration as regards existence of the right based on the said deed of partition. He pointed out that the finding recorded in paragraph No.60 is not set aside by the Appellate Court.

3. I find that there is no prayer made by the Appellant-Plaintiff in the present suit for grant of declaration as regards rights created in favour of the Appellant by the deed of partition dated 10th January 1957. In fact the Appellant did not accept that partition was earlier effected on the basis of the said deed of partition. In absence of any specific prayer and in absence of any right claimed by the Appellant on the basis of the earlier partition, the Trial Court could not have passed a decree based on the said right in respect of the well.

4. The Courts below have accepted the legality and validity of deed of partition dated 10th January 1957. If the Appellant is claiming any right on the basis of partition deed dated 10th January 1957 and if the said right is denied by the Respondents, it is for the Appellant to take out appropriate proceedings in that behalf.

4. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.

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